

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 641 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGMOHANDAS JADURAM, DECD, THRO: HIS HEIRS & LRS

Versus

KANCHANLAL GORDHANDAS, DECD. THRO: HEIRS & LRS

Appearance:

Miss. Kiran J. Sejpal, Advocate for Mr. B.R.
Shah, Senior Advocate for the petitioners.
Miss. Kalpana J. Brahmbhatt, Advocate for Ms.
V.P. Shah for the respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/11/97

ORAL JUDGEMENT

This revision application is directed against the judgment and decree dated 29th September 1980, passed by the then learned District Judge at Surat in Regular Civil Appeal No. 92 of 1988, allowing the appeal and reversing the judgment and decree, passed by the then learned Additional Small Causes Judge at Surat, in Small Cause Suit No. 1074 of 1971 whereby the suit was decreed and present opponents were directed to hand over peaceful and

vacant possession of the demise premises and pay the amount of rent as well as mesne profit.

2. The facts, which led the present petitioners to prefer this revision application may in brief be stated. Jagmohandas Jaduram, and Arvindlal Natwarlal were the owners of the building bearing Nondh No. 1857-A-I situated within the local limits of ward no.4 of Surat city. The front northern portion of that building is let to Kantilal Gordhandas and Kanchanlal Gordhandas. The standard rent of the demised premises was fixed at Rs. 16.50 ps., per month. Over and above such rent the opponents who are the tenants had to pay Rs. 2/- per month towards sanitary cess. They have paid rent upto 30th April 1972. They are in arrears of rent from 1st May 1972. The opponents are negligently using the premises amounting to nuisance. They have also carried out material alterations and additions erecting permanent structure in the demised premises. The whole building is in dilapidated condition and is required to be demolished immediately for the purpose of constructing it afresh. The petitioners who are the heirs of Jagmohandas Jaduram and Arvindlal Natwarlal wanted to construct a new building demolishing the old one. They therefore obtained necessary certificate of the Tribunal under Section 13 (3-A) of the Bombay Rent Act and satisfied all the requirements undergoing necessary formalities. For all these grounds the petitioners found that possession of the demised premises was required. They therefore issued a notice dated 13th February 1972 terminating the tenancy, and called upon the opponents to vacate and hand over the possession. After being served with the notice, the opponents did not vacate the demised premises and therefore the petitioners were constrained to prefer Regular Civil Suit No. 731 of 1972 before the court of the Civil Judge (SD) at Surat to recover the amount of rent that had become due till then and possession of the demised premises together with mesne profit and costs.

3. After being served with the summons, the opponents appeared before the trial court, and filing their written statement at Exh. 14 challenged the case alleged by the petitioners. They have denied every allegation and have also called in question the bonafides of the petitioners. The trial court then framed necessary issues at Exh.45 and recorded the evidence led by the parties. Appreciating the evidence on record, the trial court reached the conclusion that the opponents had not caused waste or damage to the demised premises. The opponents had also not carried out any material alterations or additions and the case about erection of

the permanent structure was also not established. The case regarding nuisance and annoyance alleged by the petitioners did not find favour of the trial court. It was however held by the trial court that the petitioners really required the demised premises for demolishing the whole building and constructing a new one. The case about bonafide requirement, and acquisition of the suitable premises by the opponents was disbelieved. Holding that notice was legal and valid and Rs. 30/- were due, the trial court on 31st day of March 1978 passed the decree directing the opponents to hand over peaceful and vacant possession of the demised premises to the petitioners with a further direction to pay the amount of Rs. 30/- together with mesne profit at the rate of Rs. 18.50 ps., per month from the date of the suit till realisation of possession.

4. Being aggrieved by such judgment and decree, the opponents preferred Regular Civil Appeal No. 92 of 1978 before the District Court at Surat. The then learned District Judge hearing the parties found that the case for demolishing the building for the purpose of erecting a new building was not established. The case of bonafide requirement was according to him was rightly not believed and likewise the case about acquisition of suitable premises by the opponents. He therefore allowed the appeal with costs and set aside the judgment & decree so far as the same were relating to the possessory relief. It is against that judgment and decree, the present revision application has been filed by the petitioners.

5. Jagmohandas Jaduram one of the plaintiffs-landlords died during the pendency of the suit. His heirs and legal representatives were then brought on record; and they are petitioners Nos. 1-A to 1-C in the Revision Application on hand. Kanchanlal Gordhandas, Prabhakar Gordhandas & Shantilal Gordhandas, original defendants Nos. 1-3 & 4 respectively died during the pendency of this Revision Application. Their heirs & legal representatives are also brought on record.

6. Challenging the judgment and decree, it has been submitted before me that the learned District Judge fell into error in not correctly appreciating the requirements of Section 13(1)(hh) and Section 13 (3-A) and (3-B) of the Bombay Rent Act. The petitioners had satisfied all the requirements producing the certificate of the Tribunal, as well as filing the undertaking. The certificate issued by the Tribunal is no doubt signed by the Deputy Engineer, Mr. J.M. Desai, but when it is countersigned by the Executive Engineer, Mr. D.C. Shah, the appellate court ought to have held the same to be the

legal and valid certificate satisfying the requirements of Section 13(3-A). The present building which is to be demolished is consisting of not more than two floors and is in dilapidated condition. Unless it is demolished immediately it is likely to lead to poignant incidents. The petitioners therefore reasonably and bonafide require the possession of the demised premises for immediate purpose of demolishing the whole building and erecting a new one at that place. The new building is also to be constructed as per the bye-laws and regulations of the Municipal Corporation of the city of Surat. To show that every thing is in consonance with the requirements of the bye-laws as well as the Rent Act necessary map is produced at Exh. 64 and estimate is produced at Exh. 62. As per the map produced the petitioners are to construct a new building not less than two times the number of residential tenements, and not less than two times the floor area contained in the whole of the building inclusive of the demised premises to be demolished. As per the assurance given filing the undertaking, the work of demolishing the building would commence not later than one month and would be completed not later than 3 months from the date of the recovery of possession; and then the erection of the new building would be completed within the period not later than 15 months from that date. The petitioners are also having sufficient fund which can be spelt out from Public Deposit Receipts and Fixed Deposit Receipts produced at Exh. 74. When thus the requirements of law are satisfied, the trial court was perfectly right in passing the eviction decree, but the learned appellate Judge fell into error in not correctly appreciating the certificate issued by the Tribunal produced at Exh. 54. The learned District Judge found that when the certificate was not issued by the Tribunal namely the Executive Engineer, and was issued by the Deputy Engineer who was not vested with the power of the Tribunal, the same was running counter to the requirements of Section 13 (3-A) and therefore it was not a valid certificate which can be taken into account. He therefore disagreeing with the reasonings given by the trial court held that the case for seeking eviction decree under Section 13(1)(hh) was not made out and therefore the petitioners were not entitled to the possessory relief. The appeal to that extent was allowed. This finding is vehemently assailed by the learned advocate representing the petitioners. The other grounds resorted to and canvassed before the lower court as well as the lower appellate court are not pressed before me. I have therefore to consider whether the petitioners have made out their case for seeking the decree of eviction under Section 13(1)(hh) of the Bombay

Rent Act.

7. Before I proceed to dissect the merits of the rival contentions, it may be stated that except the certificate issued by the Tribunal (Exh.54) no submission about the other requirements having been satisfied is made by the other side. The appreciation of the case therefore falls within the narrow compass. The inquiry & adjudication therefore are confined to the validity of the certificate issued by the Tribunal and produced at Exh. 54.

8. The Bombay Rent Act came to be enacted to protect the rights both of the landlords and tenants, and check the mischief of either of the two. Certain grounds are made available to the landlord for seeking the decree of eviction. If the landlord desires to have a decree of eviction, has therefore to resort to the grounds available in the Bombay Rent Act, and has then not only to plead his case specifically, but has also to lead necessary evidence and establish the case he is asserting. In this case, out of several grounds available, the petitioners sought the decree of eviction before the trial court on the aforesaid grounds namely non-payment of rent, acquisition of suitable premises, bonafide requirement and the conduct of the opponents causing nuisance and annoyance to others, and further the building being too old and requiring immediate demolition for the purpose of erecting a new building at that place. On some grounds the petitioners failed before the trial court, but succeeded in establishing their case namely their reasonable and bonafide requirement for the immediate purpose of demolishing the building and erecting a new one available under Section 13(1)(hh) of the Bombay Rent Act; with the result they succeeded in obtaining the decree of eviction. In appeal before the District Court the opponents challenged the decree of eviction passed. Considering the rival submissions, the issues about bonafide requirements, suitable acquisition of the premises and reasonable and bonafide requirement for immediate purpose of demolition and erection of new building were raised and dealt with. All those grounds did not find favour with the first appellate court. Accepting the case of the opponents, the then learned District Judge-Surat allowed the appeal and set aside the judgment & decree of the trial court so far as the same related to the possessory relief. In the present revision, however, as made clear above, the petitioners have confined to the only ground viz., requirement for the immediate purpose of demolishing & erecting a new building available under Section 13(1)(hh) of the Bombay

Rent Act. The petitioner's learned advocate took me to the relevant provisions of law & evidence on record taking pains, but I am not persuaded to take a different view than the one taken by the learned District Judge.

9. The object of Sec. 13(1)(hh) is to see that the problems of the shortage of the accommodation can be solved by encouraging the constructions of the new buildings. It is also the object of the provision that the landlords can developing their properties provide more & more accommodations and thereby help root out hardships experienced by the society for want of sufficient residential accommodations. The Legislature has thought it wise to provide in law a ground thereof so as to enable the landlord to seek the decree of eviction on that ground viz., development of the property, demolishing the old one and erecting the new one at that place. It appears that, after that provision was made, the Legislature found that to check the mischief that had developed on the part of the landlords and to protect the interest of the tenants a stricter provision was necessary and therefore Section 13(3-A) and (3-B) came to be inserted in Bombay Rent Act vide Bombay Amendment Act No. 53 of 1950. As per the provision of Section 13(3-A), the landlord seeking the decree of eviction under Section 13(1)(hh) is required to obtain the certificate from the Tribunal and produce the same in the suit. It is pertinent to note that while inserting clause (3-A) to Section 13, the Legislature has used the word "shall" and has then made it clear that if the certificate is not produced obtaining the same from the Tribunal, no decree for eviction shall be passed. The word "shall" connotes that the provision is mandatory and therefore if the suit is instituted without the production of the Tribunal's certificate, the court is precluded from passing the decree of eviction on the ground mentioned in Section 13(1)(hh) of the Bombay Rent Act. In short, without the certificate from the Tribunal the suit is not maintainable, however laudable the case the landlord may have, the decree of eviction on the ground mentioned in Section 13(1)(hh) cannot be passed. The certificate can be produced at the time of the institution of the suit, or subsequently during the course of the hearing. If valid certificate is not produced at all, no decree of eviction can be passed. The certificate of the Tribunal is made imperative because the landlord has to show that the requirements vide Section 13 (3-B)(b)(i)(iii)(iv) are satisfied, and the certificate of the Tribunal is the proof to convince the court that everything is in order. On the strength of the certificate, therefore, it can well be assumed by the court that all the requirements of

Section 13(1)(hh) are satisfied and a decree of eviction can be passed if otherwise the case of the landlord is established. Hence the Tribunal is under an obligation to deeply inquire whether the conditions are satisfied and plans, map and estimate prepared are as per rules and every thing is in order. Once the Tribunal inquires into all such necessary questions and forms the opinion, of course on the basis of the required materials before it, that all the requirements of the provision of Sec. 13(3-B) are satisfied and the case of the landlord is not only genuine but in order also, it will issue the certificate, and once the certificate is issued and which is valid in the eye of law, the same cannot be questioned in a civil court. It is because of such onerous function the Tribunal has to perform undergoing several exercises, the provision is made mandatory using the word "shall". When accordingly the certificate issued by the Tribunal is made conclusive of the facts stated therein, the same has to be strictly appreciated if its validity is assailed by the other side, or the court finds in it, some thing unusual qua validity, perusing the certificate.

10. According to the opponents, the certificate issued by the Tribunal is not signed by the officer authorised to sign and so it being not in consonance with the requirements of law, is invalid and loses its force. I am urged to treat the same to be the non-entity on record. In other words, this case may be treated to be the case without any certificate having been obtained from the Tribunal. The contention is worth considering and cannot lightly be brushed aside. If the certificate is invalid, it would be no certificate in the eye of law and the same cannot be taken into account while determining the issues that arise for consideration.

11. It may be stated at this stage that, under Section 13(3-B), the powers of the Tribunal are vested in the Executive Engineer by the State Government issuing necessary G.R. which is referred to by the learned trial Judge in his judgment in para 28. When the certificate issued by the Tribunal is perused, what appears is that the same is signed by Shri J.M. Desai, Deputy Engineer on the right side and on the left side the same is counter-signed by the Executive Engineer (R & B Division), Surat. Admittedly, Deputy Engineer is not vested with the power of the Tribunal. Still, however, he has signed the certificate. The moot question that arises for consideration is whether the certificate issued by the Deputy Engineer can be said to be legal & valid in the eye of law, and whether the same can be

taken into account for the purpose of determining the issues that arise for consideration. Before I proceed, I think it proper to refer a decision of the Apex Court rendered in the case of Ramchandra Keshav Adke (Dead) by Lrs. vs. Govind Joti Chavare and others - AIR 1975 S.C. 915 wherein referring the decision of the Privy Council reported as AIR 1936 P.C. 253 and that of the Supreme Court reported as AIR 1961 S.C. 1527, it is made clear that where a power is given to do a certain thing in a certain way, the things must be done in that way and not at all, and other methods of performance are necessarily forbidden. This principle of law will squarely apply to the present case. As mandated vide Section 13(3-B), the State Government has constituted the Tribunal, and the Executive Engineers are vested with the powers of Tribunal to issue the certificate, under Sec. 13(3-B) of the Bombay Rent Act. When thus the Executive Engineer alone is vested with the power of the Tribunal to issue the certificate, as per the principle of law pointed out by the Apex Court in the case of Ramchandra Keshav Adke (Supra), the certificate is required to be issued by the Exe. Engineer and by no one else because any other way or method is forbidden. In this case, when the certificate is not issued by the Executive Engineer vested with the power of the Tribunal and is issued by the Dy. Engineer who is not vested with the power of the Tribunal, the same cannot be termed legal and valid, or in consonance with the requirement of Section 13 (3-B). When that is the case, that certificate having been issued by the unauthorised or incompetent officer and not by the Tribunal, the same cannot be said to be the valid certificate in the eye of law. Consequently the present case is rightly treated to be a case of no certificate or a case without a valid certificate by the appellate court, and it has rightly reached the conclusion that when one of the requirements of Section 13(1)(hh) is not satisfied, the petitioners are not entitled to the decree of eviction. The learned District Judge has therefore rightly set aside the observations and findings of the trial court, because the trial court missed to take a note of the aforesaid law.

12. Faced with such situation, the learned advocate representing the petitioners submits that, when the certificate is counter-signed by the Executive Engineer, the same can be said to have been issued by the Tribunal because in view of the meaning of the word "countersign" given in Black's Law Dictionary, the authority countersigning should be deemed to have approved the contents of the documents, and certified the same to be in order. In other words, what is sought to be canvassed

is that when the authority vested with powers signs the certificate in whatever capacity, or way, the same may be held to have been issued by the said authority for the higher authority can never countersign the document signed by the subordinate.

13. The meaning of the word "countersign" given in Black's Law Dictionary may be reproduced.

"Countersign. As a noun, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it.

As a verb, to sign in addition to the signature of another in order to attest the authenticity."

As per such meaning, the submission does not gain a ground to stand upon. I have with meticulous care read the above stated meaning of the word "countersign". What can be deduced is that it is having two facets. It can be interpreted in one way when the same appears as 'noun', and differently when appears as 'verb'. Whenever subordinate officer or staff member preparing the document, puts up before or sends to the higher officer for signing the same, he puts up his signature either in the margin or on the side below the contents so as to ensure or giving guarantee to the higher officer that he is vouching for the correctness of the contents and their reliability, and the higher authority or the principal may sign the letter or document putting off further deep study or investigation into the matter. Such counter-signature of the subordinate should be interpreted as 'noun'. So when used as noun, the subordinate gives guarantee to the higher one or principal authority that every thing is prepared in order. When any one regardless of his rank or status, signs the letter or document not for ensuring or giving guarantee about the correctness of the contents or every thing having been done in order, but simply to attest the authenticity of another's signature put up thereon or as a mark used for identification such signature then assumes the characteristics of a "verb". When counter-signature therefore appears on the document/letter as a verb, it vouches for the signature of the signatory thereof and nothing further. In short, what becomes clear is that the subordinate has to countersign the document/letter as "noun" so as to convey watchword or password and ensure the author or principal or higher authority, i.e. executant who has to sign the

same that everything is in order and further study or inquiry may be put off, and he may safely assuming its reliability sign. Any one or the higher authority when countersigns the document, and thereby add a signature to a document already signed by another so as to certify or attest only the signature of the principal or executant or another to whomsoever concerned, and not the contents such countersignature assumes the characteristic of a 'verb'. In any case therefore and whatever may be the rank or status, the person countersigning the document/letter does not become the principal or executant or author thereof.

14. The certificate in question is countersigned by the Executive Engineer, the higher authority of the Dy. Engineer and his signature assumes the characteristics of a "verb". After the Dy. Engineer signed as principal or executant of the certificate the Exe. Engineer countersigned the same so as to convey to all concerned that signature of the executant or author thereof is the genuine signature of the Dy. Engineer, and nothing further. When authenticity of the signature of Dy. Engineer is certified the Executive Engineer thereby does not become the author or executant of the certificate. Of course his counter-signature does not appear as "noun", but even if the same is for a while accordingly construed, it will make no difference. In that case also, the Executive Engineer putting his countersignature does not become the executant, or principal or author of the certificate. He merely in that case simply sent a signal to Dy. Engineer to issue the certificate, but certainly not on his behalf, which he, in abovestated law could not do so, and Dy. Engineer was not vested with necessary powers of the Tribunal. In any case therefore by countersigning the Exe. Engineer cannot be said to have signed as the principal or author thereof and issued the same as the Tribunal. The author or principal or executant of the certificate is the Dy. Engineer, and no one else. He is not vested with the powers of the Tribunal. Hence the certificate is issued by the unauthorised person. Consequently the same is not valid in law. The same cannot be taken into account. Here is therefore the case without any required certificate. The contention advanced on behalf of the petitioner therefore fails.

15. When the mandatory requirement of Sec. 13(3-A) is not fulfilled, in view of the said provision, even if the petitioner has succeeded in otherwise establishing the case under Section 13(1)(hh), the decree of eviction cannot be passed. The lower appellate court was

therefore perfectly right in reversing the judgment and decree passed by the trial court and refusing to pass the decree of eviction. In view of the matter, I see no justification to interfere with the judgment and decree passed by the lower appellate court. In the result, this revision application cannot be allowed as there is no legal justification to upset the findings. The judgment and decree passed by the lower appellate court are required to be maintained.

16. For the aforesaid reasons, the revision application, being devoid of merits, is hereby dismissed. No costs in the circumstances. Rule is discharged.

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